

Nos. 11,943 and 11,944

IN THE

United States Court of Appeals
For the Ninth Circuit

JAMES M. AGNEW, JR., et al.,
Appellants,

VS.

AMERICAN PRESIDENT LINES, LTD.,
(a corporation),
Appellee.

No. 11,943

(CONSOLIDATED
CASES)

JOHN W. GRIFFIN, et al.,
Appellants,

VS.

AMERICAN PRESIDENT LINES, LTD.,
(a corporation),
Appellee.

No. 11,944

APPELLANTS' PETITION TO MODIFY OR AMEND DECISIONS.

ALBERT MICHELSON,
Russ Building, San Francisco 4,

*Proctor for Appellants
and Petitioners.*

MAY 26 1949

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APPELLANTS' PETITION TO MODIFY OR AMEND DECISIONS.

*To the Honorable William Denman, Chief Judge,
and to the Honorable Albert Lee Stephens and
William E. Orr, Circuit Judges:*

The appellants in the above entitled and consolidated causes respectfully petition for the modification or amendment of the decisions therein, as follows:

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*To the Honorable William Denman, Chief Judge,
and to the Honorable Albert Lee Stephens and
William E. Orr, Circuit Judges:*

The appellants in the above entitled and consolidated causes respectfully petition for the modification or amendment of the decisions therein, as follows:

1. The appellants in each cause respectfully petition that the decision therein be modified or amended to allow and specially direct interest at the rate of 7% per annum on the claim of each libellant for war bonus from the date of filing the libel.

Subdivision 4 of Rule 26 of the above entitled court provides that "In all cases of admiralty, damages and interest may be allowed, if specially directed by the court". It is uniformly held that in cases of debt due under a written contract interest is recoverable as a matter of right. (*New York Trust Co. v. Detroit T. & L. Ry. Co.*, 6 Cir. 1918, 251 F. 514, 615.) The war bonus claims of the appellants are of that type. Interest should therefore be allowed and specially directed at the rate of interest upon judgments in the State of California. (*Steeves v. American Mail Line*, 9 Cir. 1946, 156 F. 2d 59.) That rate of interest is 7% per annum. (2 Deering's California General Laws, Act 3757, Usury Law, sec. 1.)

2. The appellants in each cause respectfully petition that the decision therein be modified or amended to allow appellants their costs on appeal and also their costs in the trial court.

The decree appealed from was affirmed in part and reversed in part. Under Rule 27 of the above entitled court allowance of the costs on appeal is therefore discretionary. That discretion may be properly exercised in favor of appellants as wards of the admiralty. (*Cortes v. Baltimore Insular Line*, 287 U.S. 367, 377, 53 S.Ct. 173, 176, 77 L.Ed. 368.) The

avowed policy of the law to relieve seamen from costs (28 U.S.C.A., sec. 1916, formerly 28 U.S.C.A., sec. 837) prompts the conclusion that such discretion should be exercised in their favor.

On the appeal appellants challenged as error the failure of the trial court to decree costs in their favor. (Cf. Brief for Appellants, p. 25.) The point has not been decided. The authorities just cited also warrant the modifying or amending of the decree to allow appellants their costs in the trial court.

3. The appellants in cause numbered 11,944, respectfully petition that the opinion therein be modified or amended to show that they were *licensed* personnel on the Steamer President Harrison.

The rider forming part of the shipping articles and applicable to them as *licensed* personnel differed from the rider applicable to the unlicensed personnel with respect to the rate of monthly war bonus. In the case of unlicensed personnel the applicable rider fixed the rate at \$80 monthly. (Cf. Brief for Appellants, p. 4.) But in the case of *licensed* personnel the applicable rider fixed the rate at 60% of basic wages. (Cf. Brief for Appellants, p. 5.) The basic wages for *licensed* personnel were specified in the shipping articles and they are repeated in Column 3 of Exhibit A annexed to the answer to the libel in cause numbered 11,944. (Griffin Apostles, p. 26.) The monthly war bonus claimed by each appellant in the *licensed* personnel and computed upon his said basic wage was set forth in Column 3 of Schedule A annexed to the

libel in cause numbered 11,944. (Griffin Apostles, p. 6.) The figures are undisputed.

The appellants in cause numbered 11,944 are apprehensive that the decision therein may have left it uncertain as to the rate at which the monthly war bonus of each appellant in the *licensed* personnel is to be computed. They therefore respectfully petition that the decision in cause numbered 11,944 be modified or amended to order the entry of a decree in their favor computed at the rate of monthly war bonus set forth in their libel.

WHEREFORE your petitioners respectfully pray that the decisions in the above entitled and consolidated causes be modified or amended in the foregoing respects and particulars.

Dated, San Francisco,
May 25, 1949.

ALBERT MICHELSON,
*Proctor for Appellants
and Petitioners.*

CERTIFICATE OF PROCTOR

I hereby certify that I am proctor for appellants and petitioners in the above entitled cause and that in my judgment the foregoing petition is well founded in point of law as well as in fact and that said petition is not interposed for delay.

Dated, San Francisco,
May 25, 1949.

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*Proctor for Appellants
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libel in cause numbered 11,944. (Griffin Apostles, p. 6.) The figures are undisputed.

The appellants in cause numbered 11,944 are apprehensive that the decision therein may have left it uncertain as to the rate at which the monthly war bonus of each appellant in the *licensed* personnel is to be computed. They therefore respectfully petition that the decision in cause numbered 11,944 be modified or amended to order the entry of a decree in their favor computed at the rate of monthly war bonus set forth in their libel.

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